

58-37a-1. Short title.

This chapter shall be known and may be cited as the "Utah Drug Paraphernalia Act."

Enacted by Chapter 76, 1981 General Session

58-37a-2. Purpose.

It is the intent of this chapter to discourage the use of narcotics by eliminating paraphernalia designed for processing, ingesting, or otherwise using a controlled substance.

Enacted by Chapter 76, 1981 General Session

58-37a-3. "Drug paraphernalia" defined.

As used in this chapter, "drug paraphernalia" means any equipment, product, or material used, or intended for use, to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, repackage, store, contain, conceal, inject, ingest, inhale, or to otherwise introduce a controlled substance into the human body in violation of Title 58, Chapter 37, Utah Controlled Substances Act, and includes, but is not limited to:

(1) kits used, or intended for use, in planting, propagating, cultivating, growing, or harvesting any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) kits used, or intended for use, in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(3) isomerization devices used, or intended for use, to increase the potency of any species of plant which is a controlled substance;

(4) testing equipment used, or intended for use, to identify or to analyze the strength, effectiveness, or purity of a controlled substance;

(5) scales and balances used, or intended for use, in weighing or measuring a controlled substance;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannited, dextrose and lactose, used, or intended for use to cut a controlled substance;

(7) separation gins and sifters used, or intended for use to remove twigs, seeds, or other impurities from marihuana;

(8) blenders, bowls, containers, spoons and mixing devices used, or intended for use to compound a controlled substance;

(9) capsules, balloons, envelopes, and other containers used, or intended for use to package small quantities of a controlled substance;

(10) containers and other objects used, or intended for use to store or conceal a controlled substance;

(11) hypodermic syringes, needles, and other objects used, or intended for use to parenterally inject a controlled substance into the human body, except as provided in Section 58-37a-5; and

(12) objects used, or intended for use to ingest, inhale, or otherwise introduce a

controlled substance into the human body, including but not limited to:

- (a) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (b) water pipes;
- (c) carburetion tubes and devices;
- (d) smoking and carburetion masks;
- (e) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;
- (f) miniature cocaine spoons and cocaine vials;
- (g) chamber pipes;
- (h) carburetor pipes;
- (i) electric pipes;
- (j) air-driven pipes;
- (k) chillums;
- (l) bongs; and
- (m) ice pipes or chillers.

Amended by Chapter 101, 2011 General Session

58-37a-4. Considerations in determining whether object is drug paraphernalia.

In determining whether an object is drug paraphernalia, the trier of fact, in addition to all other logically relevant factors, should consider:

- (1) statements by an owner or by anyone in control of the object concerning its use;
- (2) prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to a controlled substance;
- (3) the proximity of the object, in time and space, to a direct violation of this chapter;
- (4) the proximity of the object to a controlled substance;
- (5) the existence of any residue of a controlled substance on the object;
- (6) instructions whether oral or written, provided with the object concerning its use;
- (7) descriptive materials accompanying the object which explain or depict its use;
- (8) national and local advertising concerning its use;
- (9) the manner in which the object is displayed for sale;
- (10) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (11) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
- (12) the existence and scope of legitimate uses of the object in the community;
- (13) whether the object is subject to Section 58-37a-5; and
- (14) expert testimony concerning its use.

Amended by Chapter 101, 2011 General Session

58-37a-5. Unlawful acts.

(1) (a) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body in violation of this chapter.

(b) Any person who violates Subsection (1)(a) is guilty of a class B misdemeanor.

(2) (a) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, any drug paraphernalia, knowing that the drug paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body in violation of this act.

(b) Any person who violates Subsection (2)(a) is guilty of a class A misdemeanor.

(3) Any person 18 years of age or older who delivers drug paraphernalia to a person younger than 18 years of age and who is three years or more younger than the person making the delivery is guilty of a third degree felony.

(4) (a) It is unlawful for any person to place in this state in any newspaper, magazine, handbill, or other publication any advertisement, knowing that the purpose of the advertisement is to promote the sale of drug paraphernalia.

(b) Any person who violates Subsection (4)(a) is guilty of a class B misdemeanor.

(5) (a) A person may not be charged with distribution of hypodermic syringes as drug paraphernalia if at the time of sale or distribution the syringes are in a sealed sterile package and are for a legitimate medical purpose, including:

- (i) injection of prescription medications as prescribed by a practitioner; or
- (ii) the prevention of disease transmission.

(b) A person may not be charged with possession of hypodermic syringes as drug paraphernalia if the syringe is unused and is in a sealed sterile package.

(6) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.

Amended by Chapter 101, 2011 General Session

58-37a-6. Seizure -- Forfeiture -- Property rights.

Drug paraphernalia is subject to seizure and forfeiture in accordance with the procedures and substantive protections of Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

Amended by Chapter 185, 2002 General Session